



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

August 13, 1996

Ms. Nan Seidenfeld
Walsh, Anderson, Underwood, Schulze
& Aldridge
P. O. Box 2156
Austin, Texas 78768

OR96-1442

Dear Ms. Seidenfeld:

You have asked whether certain information is subject to required public disclosure under section 552 of the Government Code. Your request was assigned ID# 24772.

The Floresville Independent School District (the "district") received a request for "all paid receipts, bills, and balances due pertaining to all attorneys fees for attending school board meetings, ARD's, but not limited to, mediation fees, and total cost for due process hearing" in regard to certain students and their parents. You explain that those parents have recently been involved in "special education procedures that overlap and intertwine with issues" in a lawsuit that they have filed against the school district. You claim that the material is excepted from public disclosure under sections 552.101 and 552.103(a) of the Government Code.

Section 552.103(a) applies to information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

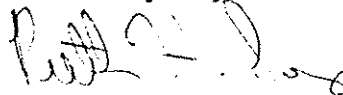
To show the applicability of section 552.103(a), a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to that litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.-Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. You assert that the attorney fee bills relate to pending litigation. We have reviewed the documents and our review shows that they are related to pending litigation. Thus, you may withhold the descriptions in the requested documents under section 552.103(a). However, you may not withhold the billing rates, dates, times, and as marked on the sample documents. See Open Records Decision No. 589 (1991).

The applicability of section 552.103(a) ends if the other parties to the anticipated litigation obtain the information or when the litigation concludes. Attorney General Opinion MW-575 (1982) at 2; Open Records Decision Nos. 350 (1982) at 3, 349 (1982) at 2. We note that since the section 552.103(a) exception is discretionary with the governmental entity asserting the exception, Open Records Decision No. 542 (1990) at 4, the department could choose to release the information at this time. Gov't Code § 552.007.

You asserted section 552.101 for the attorney client privilege. We note that this exception is properly raised under section 552.107. See Open Records Decision No. 575 (1990). As you have shown the applicability of section 552.103, we need not discuss your section 552.107 argument. However, if that litigation has concluded, we have marked a sample of the type of information that can be withheld under section 552.107.¹

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/SAB/rho

¹We note that these requestors are the parents of students identifiable in some of the items on the bills but that other references may be related to other students. These references should be redacted. We also note that this office recently issued Open Records Decision No. 634 (1995), which concluded: (1) an educational agency or institution may withhold from public disclosure information that is protected by FERPA and excepted from required public disclosure by sections 552.026 and 552.101 without the necessity of requesting an attorney general decision as to those exceptions, and (2) an educational agency or institution that is state-funded may withhold from public disclosure information that is excepted from required public disclosure by section 552.114 as a "student record," insofar as the "student record" is protected by FERPA, without the necessity of requesting an attorney general decision as to that exception. Open Records Decision No. 634 (1995).

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Enclosures: Marked documents